

11/10/86



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: CEBCO Construction, Inc.  
File: B-224932  
Date: October 22, 1986

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### DIGEST

Allegation that procuring agency and the Small Business Administration (SBA) engaged in bad faith to expedite a small business size status determination in order to make an award before the end of the fiscal year is without merit where the procuring agency's and SBA's actions conform to the requirements prescribed in the Federal Acquisition Regulation.

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### DECISION

CEBCO Construction, Inc. (CEBCO), protests the award of a contract for refinishing exterior walls on barracks at Fort Bragg, North Carolina to Head, Inc. (HI), under invitation for bids (IFB) No. DACA21-86-B-0206, a small business set-aside, issued by the United States Army Corps of Engineers (Corps).

We deny the protest.

On the September 5, 1986, bid opening date, HI was determined to be the low bidder. However, by letter of the same date, CEBCO filed a protest against the small business size status of HI with the contracting officer. The matter was referred to the Small Business Administration (SBA) by the contracting officer and the SBA determined that HI qualified as a small business and notified the contracting officer and CEBCO by letter dated September 29, 1986. The Corps made award to HI on September 30, 1986. CEBCO simultaneously filed a protest in our Office and an appeal to the SBA's Office of Hearings and Appeals by letter dated October 7, 1986.

CEBCO advises that it filed this protest in order to have our Office stay performance of the contract until SBA ruled on its appeal and until we reviewed the allegation that SBA and the Corps engaged in bad faith to award the contract to

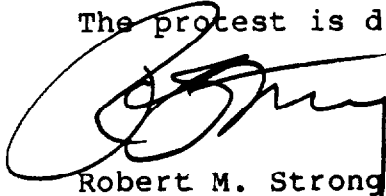
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HI. In CEBCO's opinion, there was not enough time for SBA to conduct a thorough investigation of the size status of HI before the end of the fiscal year. Thus, it alleges that SBA and the Corps improperly expedited making the size status determination of HI so that the Corps could make an award before funding expired at the end of the fiscal year.

Under the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302 (c)(1) (1985), a contracting officer who receives a size status protest must refer the matter to the SBA for a determination. Within 10 business days from receiving the protest, the challenged bidder's response, and other pertinent information, the SBA is required to determine the small business status of the challenged concern and notify the contracting officer, the protester, and the challenged bidder of its decision by certified mail. See 48 C.F.R. § 19.302 (g)(2). The regulation further states that award may be made on the basis of that determination and that the determination is final unless appealed in accordance with the regulations. If the award was made before the contracting officer received notice of the appeal, the contract shall be presumed to be valid. 48 C.F.R. § 19.302 (g)(2). Although the FAR provides for an appeal from an initial SBA size determination by any concern that has been adversely affected, there is no requirement that the contracting officer withhold award or performance pending a final ruling on an appeal from that decision. See JRR Construction Company, Inc., B-220592, Oct. 4, 1985, 85-2 C.P.D. ¶ 383.

While CEBCO expresses concern at the expediency with which the SBA rendered its decision, the contracting officer's and SBA's actions were consistent with the FAR. Therefore, there is no legal basis to conclude that award to HI was improper or resulted from bad faith.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General Counsel